

DETAILED ACTION

Status of Claims

Claims 1 – 11 are pending and are currently under examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 7 – 9 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by the English translation of JP 07-048554 A (see entire document, hereinafter referred to as '554).

'554 discloses an adhesive tape or sheet with an emulsion type acrylic pressure sensitive adhesive composition ([0001]). The adhesive layer is formed on a base (backing) material such as cheesecloth or a non-woven fabric ([0037] – [0038]). In working example 5 ([0048]), sucrose fatty acid ester was included in the emulsion type acrylic pressure sensitive adhesive and used to make an adhesive tape as in working example 1. In that example, the dried adhesive composition was transferred to the non-woven fabric to obtain the adhesive tape ([0043]). Acrylic acid is exemplified as a water-

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soluble polymer, as required in claims 7 and 11, in paragraph 17 of the instant application.

Both '554 and the claims of the instant application recite an adhesive product in which the adhesive base comprises a sucrose fatty acid ester.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1 and 4 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the English translation of JP 2,632,838 B2 (hereinafter referred to as '838) in view of the English translation of JP 08-081331 A (hereinafter referred to as '331).

'838 discloses a polymer base composition containing a water absorbing polymer is used in a plaster (bandage; p 1, detailed description paragraph 1). The polymer base can be made from natural rubber, styrene isoprene styrene, polybutylene or acrylic (1st full paragraph, p 4). Working examples 4 (p 7, last paragraph) and 8 (p 8, last paragraph) disclose a polymer base that comprises natural rubber and polybutene. These bases are coated onto cloth to make the plaster. The water absorbing polymer absorbs the sweat or secretions (p 2, last paragraph) to mitigate pain at the time of removal of the bandage (exfoliation). At small loadings of the water-absorbing polymer, the incorporation of the sweat absorbing polymer into the base does not result in easy separation of the plaster body from the surface (p 3, paragraphs 3 – 5). '838 does not exemplify sucrose fatty acid esters as a water absorbing component.

'331 discloses solid cosmetics compositions that resists water and have excellent durability ([0001]). Sucrose fatty acids esters excel at absorbing sweat and sebum but the resulting solid composition has excellent durability and resists water ([0006]). The base is emulsified or gelled by the fatty ester contact with sweat and that liquid absorption does not have a bad influence on the adhesion of the cosmetic to the skin ([0008]). The fatty acid of the sucrose fatty acid ester can contain between 1 and 22 carbons ([0014]) and can be a single fatty acid ester or a mixture of two or more kinds of sucrose fatty acid esters.

'838 teaches the addition of water absorbing polymers into the adhesive base composition at appropriate levels reduces side effects such as pain upon bandage removal without affecting the ability of the bandage to stick to the skin. '331 discloses that sucrose fatty acid esters absorb sweat without negative effects on the adhesion of the solid cosmetic product to the skin. One of ordinary skill in the art at the time of the instant invention would have a reasonable expectation of success to use sucrose fatty acid ester as the water absorbing component in the adhesive base composition taught in '838 given that both components are taught as capable of absorbing water without negative effects on the adhesion of the product to the skin.

6. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over '554 as applied to claims 1, 2, 7 – 9 and 11 above in view of the definition of fatty acid definition (Hawley's Condensed Chemical Dictionary, 14th Edition, 2002).

'554 discloses compositions comprising acrylic acid and sucrose fatty acid esters. '554 does not disclose specific species of sucrose fatty acid esters.

Specific examples of fatty acids in the definition of fatty acid include palmitic, stearic and oleic acid. Using these fatty acids to make an ester with sucrose results in the compounds sucrose palmitic acid ester, sucrose stearic acid ester and sucrose oleic acid ester.

The genus of sucrose fatty acid ester disclosed by '554 does not provide examples of specific species so one of ordinary skill in the art would be motivated to identify specific species. Therefore the species of sucrose fatty acid esters in claims 3

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and 10 would be obvious to one of ordinary skill in the art at the time of the instant invention.

Double Patenting Warning

7. Applicant is advised that should claims 1 – 3 and 7 are be found allowable, claims 8 – 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). While not verbatim recitations, the subject matter encompassed by the aforementioned claims are identical in scope. No information has been provided to indicate that the product made by the process recited in claims 1 – 3 and 7 results in a different product than is recited in claims 8 – 11.

Conclusion

Claims 1 – 11 are rejected. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nissa M. Westerberg whose telephone number is (571) 270-3532. The examiner can normally be reached on M - F, 7:30 a.m. - 5 p.m. ET.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on (571) 272-0718 or Cecilia Tsang can be reached on (571) 272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NMW

/Ardin H Marschel/
Supervisory Patent Examiner, Art Unit 1614